

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BECKER PRESERVATION, LLC, a Nevada  
Limited Liability Company,

Plaintiff,

vs.

JAMES A. MCCLAIN, and individual,  
RONALD A. MCCLAIN, an individual,  
PACIFIC LIFE INSURANCE COMPANY, a  
foreign corporation, SECURITY LIFE OF  
DENVER INSURANCE COMPANY, a  
foreign corporation, DOE INDIVIDUALS I-X,  
and ROE COMPANIES I-V,

Defendants.

02:05-CV-1034-LRH-GWF

ORDER

Presently before this Court is an ex parte motion for leave to serve by publication (# 15<sup>1</sup>) brought by Plaintiffs. Service of process is effectuated pursuant to the law of the state in which the district court sits, in this case Nevada. Nevada Rule of Civil Procedure 4(e)(1)(i) allows for service by publication when an affidavit demonstrates that a party cannot be served despite the due diligence of the plaintiffs, a verified complaint or affidavit shows that a cause of action exists against the party on whom service by publication is requested, and that person is a necessary or proper party to the action.

The Court has reviewed the affidavit filed with the pending motion and the documents that have been filed in this matter. While there is a proper affidavit informing the Court that personal service cannot be had, there is no verified complaint or allegations in the affidavit that

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<sup>1</sup> References to (# XX) refer to the Court's docket.

1 affirmatively demonstrate that a cause of action exists against the party Plaintiffs seek to serve by  
2 publication. In addition, the Court is not convinced at this time that Plaintiffs have demonstrated  
3 due diligence in attempting to effectuate service. The extent of Plaintiff's argument is that they  
4 went to a house and the person there told them he was not the man they wanted to serve. Such  
5 limited facts are not sufficient to demonstrate due diligence. Thus, Plaintiff's motion is denied at  
6 this time.

7 IT IS HEREBY ORDERED.

8 DATED this 30<sup>th</sup> day of December, 2005.

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LARRY R. HICKS  
United States District Judge  
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